

Federal Communications Commission

1270 Fairfield Road
Gettysburg, PA 17325-7245

In Reply Refer To:

7110-162

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

David E. Tubergen
T&W Electronics, Inc.
1045 South Division Ave.
Grand Rapids, MI 49507

Dear Mr. Tubergen:

This responds to your comments which were directed to the Commission's Further Notice of Proposed Rule Making in PR Docket 93-144 (Further Notice).

The Further Notice which was adopted by the Commission on October 20, 1994 proposed to implement a new framework for licensing of Specialized Mobile Radio (SMR) systems in the 800 MHz band. That framework included licensing SMR spectrum in blocks in defined market-based service areas to facilitate the development of wide-area, multi-channel SMR and also designating a portion of the band for continued licensing on a local, station-by-station basis to accommodate the needs of smaller SMR systems that primarily provide local service.

The Wireless Telecommunications Bureau also released a Public Notice¹ on July 25, 1995 seeking comment on the issues raised by the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*² relating to the proposed treatment of designated entities in the 800 MHz SMR auction. Designated entities refers to small businesses, rural telephone companies, and businesses owned by minorities or women³. Commenters were requested to provide evidence of past discrimination, continuing discrimination, discrimination in access to capital, underrepresentation and other barriers facing businesses owned by minorities and women in the 800 MHz SMR service and in licensed communications services generally.

¹ "Request for Comments in 800 MHz SMR Proceeding". Comments and reply comments were due August 4, 1995 and August 11, 1995 respectively.

² 115 S.Ct. 2097 (1995).

³ See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 388 (1993).

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Further, Commission rules⁴ require that 800 MHz stations be constructed before assignment or transfer is authorized to prevent warehousing of spectrum, and the Commission's "Finder's Preference Program"⁵ allows those demonstrating that licensees have violated certain Rules to obtain a dispositive preference for any spectrum which is recovered. In addition, the Commission established transfer disclosure requirements in its First Report and Order in PP Docket No. 93-253, FCC 94-32, released February 4, 1994, to prevent unjust enrichment of recipients of licenses acquired through lottery when those licenses are assigned or transferred.

The Commission has attempted to establish a flexible regulatory scheme, eliminate unnecessary burdens on both existing and future licensees, enhance the competitive potential of SMR services in the communications marketplace, and insure that licenses are granted to those who value the spectrum most highly and will maximize its use. Commission actions and rules, as noted above, are also intended to prevent discrimination in the regulatory process. I trust that you can appreciate the delicate balance in accomplishing these goals.

Sincerely,



Terry L. Fishel
Chief, Land Mobile Branch

⁴ See Rule 90.609.

⁵ See Rule 90.173(k).



Congress of the United States of America
House of Representatives

PRB
PY-SMYS

4468

Vernon J. Ehlers

September 28, 1995

Michigan

Federal Communications Commission
1919 M Street N W
Washington, DC 20554

Dear Congressional Liaison:

Enclosed is correspondence I have received from one of my constituents, Dave Tubergen, who has requested assistance.

I ask that your office give this matter your attention and I await your response.

Thank you for your cooperation and assistance in this matter.

With best regards, I am

Sincerely,

Vernon J. Ehlers
Member of Congress

VJE/jl
Enclosures



T&W ELECTRONICS, INC.

1045 South Division Ave. Grand Rapids, MI 49507 Ph: 616•241-3645 FAX 616•241-3739

Radio Communications, Industrial & Wholesale Electronic Supplies

Sept. 22, 1995

SEP 25 1995

Congressmen Vernon J. Ehlers
110 Michigan NW
Grand Rapids, MI 49503

Dear Congressmen,

Enclosed please find a letter written to the Federal Communications Commission. I am sending you this in the hopes that you will understand my request and offer any assistacne you may be able to. Please let me know your response even if you are unable to help.

I wish to thank you for taking the time to go over my letter, and am confident you will understand my intentions.

Sincerely,

David E. Tubergen
Vice President

C:93-144let
mlh

T&W ELECTRONICS, INC.

1045 South Division Ave. Grand Rapids, MI 49507 Ph: 616•241-3645 FAX 616•241-3739

Radio Communications, Industrial & Wholesale Electronic Supplies

Sept. 21, 1995

Federal Communications Commission
2025 M. Street N.W.
Room 7002
Washington, D.C. 20544

RE: FCC Docket #93-144

Ladies and Gentlemen,

It is my understanding that it is considered a breach of procedure to make an "other than technical" appeal to the FCC. However, I find it hard to believe that the FCC has people who are that different from myself, people who are just trying to get a job done the best they can. Furthermore, I can not believe that no one will listen to me just because I can not hurt them nor move mountains alone.

I need you to know there is no real shortage of 800 MHz or 220 MHz frequencies in West Michigan. In the 220 Spectrum I know of only 15 constructed channels in West Michigan. But the rest are "Held" and held very tightly until the right price comes along. Then these channels are sold and moved to a Real site that they will be used at. In the Grand Rapids area many licenses were originally on sites that don't exist and are just waiting for a buyer. (I call these sites "Holding Sites"). These channels are priced so extremely high, it's a joke. But it's a joke that's not very funny to the dealers who have been the "in the dirt" Competitors for so long. Dealers can neither buy these channels (money/illegal) nor will they be able to compete at the auction block (money), and the FCC can't seem to see that in 90 percent of the country they are trying to cure the wrong disease. Why can't the FCC see that there are channels out there unused and warehoused in the unlikely hopes of fabulous profits or some times (unfortunately for many elderly) in the desperate hope of getting there money back?

I am in the hope, that the FCC looks at this matter with the sprit of the law and not the letter For All People. You at the FCC must not become unwitting partners of the "Wide Area Players", who through careful manipulation of the market have created a false demand. This demand has thrown the FCC into a panic to solve a dubious problem for, and only for, what appears to be a few and select group of wide area providers. By doing this you will effectively Crucify hundreds of dealers who are being discriminated against just because they provide excellent coverage in just a few counties (or only in one BTA).

T&W ELECTRONICS, INC.

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Radio Communications, Industrial & Wholesale Electronic Supplies

The FCC must not look for and add more special privileges for the "Special Selected Wide Area Players" by climbing on the backs of County/BTA wide Dealers. If the FCC were to disallow routine special favors and have the immediate return of all unused channels the problems would be solved. I know in Grand Rapids there are only 44 constructed SMR channels and only 14 General Business and industrial channels. Where are the rest? On Vacant lots and smoke stacks, on towers never built, and buildings long since torn down and some held in reserve on the constructed first five...and all of these...protected by the FCC.

Best Regards

David E. Tubergen

C:93-144

Representative Vernon Ehlers
Senator Carl Levin
Senator Spencer Abraham